

Scheme of work: Tort

This scheme of work suggests how to deliver the Tort section of our AS and A-level Law specifications (7161, 7162).

3.3 Tort

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| Week | Topic and content skills | Activities and resources | Notes |
| 1 | Negligence – injury and damage to property:   * the ‘neighbour’ principle and the Caparo three-part test * theory of tort law – public policy factors governing the imposition of a duty of care. | * Identify the tests for imposing a duty of care. * Explain the three stages of the Caparo test. * Analyse public policy factors involved in imposing a duty of care. * Get students to watch this [lecture on the duty of care](https://www.youtube.com/watch?v=v1b3AoDkbLg). | * Consider the question of what activities might be discouraged by the imposition of a duty of care (sporting events or theatre productions). * Think of everyday examples of when a duty of care exists.   (AS does not require a consideration of the theory of tort law) |
| 2 | Negligence – injury and damage to property:   * breach of duty – the objective standard of care * theory of tort law – factors governing the objective standard of care. | * Explain the nature of the objective standard of care. * Identify risk factors governing the behaviour of the reasonable person. * Analyse the factors setting the standard of care. | * Be careful to note what the objective standard means when judging the behaviour of the defendant. * Draw up a table of the different factors governing breach and illustrate each with case examples and real life examples.   (AS does not require a consideration of the theory of tort law) |
| 3 | Negligence – injury and damage to property:   * causation in fact * causation in law (remoteness of damage). | * Identify the test for causation in fact. * Explain and illustrate the test for causation in law. * Create a Pictionary game, using images found online to test students’ case knowledge. Include answer sheet at the end. * Complete [Duty, breach and damage re-cap](#Dutybreachanddamagerecap). | * Consider scenarios where damage need not be wholly reasonably foreseeable. * Construct a step-by-step framework for answering negligence problems and practise applying it to past papers. |
| 4 | Defences to an action in negligence:   * contributory negligence * consent (*volenti non fit injuria*). | * Identify the requirements for each defence. * Explain the consequences for the parties if a defence is successful. | * Note that contributory negligence exists when a claimant either contributes to the cause of an accident or the level of his injuries. * Even if a defence is clearly relevant to a scenario problem, be careful to establish the primary liability first: a defence cannot exist by itself; it must be a defence to something. |
| 5 | Remedies available in an action for negligence:   * compensatory damages for personal injury, damage to property and economic loss * principle of mitigation of loss. | * Identify the principles governing compensatory damages. * Explain and illustrate the principle of mitigation. | * Establish the difference between special and general damages. * Have a look at some past exam questions and try to identify what damages a court might award.   (AS does not require a consideration of economic loss) |
| 6 | Negligence – psychiatric injury:   * liability for psychiatric injury sustained by primary and secondary victims * theory of tort law – policy factors governing the imposition of liability for psychiatric injury. | * Describe a primary and a secondary victim. The Hillsborough litigation may be an engaging example. * Identify the elements necessary in each case to establish liability. * Analyse policy reasons governing the extent of recovery for psychiatric injury. | * Given the advances in psychiatric medicine, discuss whether there is still a need for the rules on psychiatric injury to remain as restrictive as they are. * Note that a claimant must still establish breach of duty and causation and that the defendant may have a defence. |
| 7 | Negligence – economic loss:   * liability for economic loss caused by negligent acts and negligent misstatements * theory of tort law – policy factors governing the imposition of liability for economic loss. | * Explain the difference between negligent acts and negligent misstatements. * Identify the requirements necessary to establish liability for economic loss. * Analyse policy reasons governing the extent of recovery for economic loss. | * Discuss the extent to which ‘floodgates’ plays a role in limiting liability; for instance, by looking at a newspaper financial column giving advice on pensions or shares. * Note that a claimant must still establish breach of duty and causation and that the defendant may have a defence. |
| 8 | Occupiers’ Liability Act 1957 – liability in respect of visitors. | * Define a lawful visitor. * Explain the nature of the duty owed to a lawful visitor and when that duty is breached. * Research the case of:   Furmedge v Chester-le-street District Council [2011] and watch the following [dreamspace accident scene video](https://www.youtube.com/watch?v=D-GxXBF56qc). What does it tell us about an occupier? | * Give examples from ordinary life where members of the public are protected by the OLA 1957. * Note the contents of any warning sign: is the sign excluding liability or discharging the duty?   (AS requires a focus on s 2(1)–(3) OLA 1957 but excludes defences)  For the Furmedge case, students should get the principle here that the company (BIL) that erected the inflatable structure was an occupier for a number of reasons: *inter alia*, its employees acted as stewards inside and outside the structure. They played a part in the control of who went into the structure and how they behaved whilst inside and accordingly had some degree of physical control over the premises. |
| 9 | Occupiers’ Liability Act 1984 – liability in respect of trespassers. | * Define a trespasser. * Explain the nature of the duty owed to a trespasser and when that duty is breached. | * Using the case law, consider the treatment of children in terms of whether they are trespassers at all, whether they are owed a duty under the OLA 1984 and when an occupier might have breached that duty. * Note that the duty set out in OLA 1984 is not automatic; the claimant must establish that a duty is owed before the question of breach can be discussed.   (AS requires a focus on s 1(1)–(3) OLA 1984 but excludes defences) |
| 10 | Private nuisance:   * parties to an action for negligence * factors governing an unlawful interference. | * Identify the rules governing claimants and defendants. * Examine the factors governing an unlawful interference. | * The standard in nuisance is variable – what is lawful in one circumstance may be unlawful in another. * Look at some past exam questions and identify from the facts of the scenarios, how and why nuisance might be present. |
| 11 | Private nuisance:   * defences to an action for nuisance * remedies of damages and injunctions * theory of tort law – factors governing the grant of an injunction. | * Identify and illustrate the defences to an action in nuisance. * Examine when the remedies of damages and an injunction may be available. | * Think of examples, perhaps drawn from local media, of everyday activities which may amount to a nuisance. * Link with material on the legal system’s role in balancing conflicting interests. |
| 12 | The rule in Rylands v Fletcher:   * elements required to establish liability * defences and remedies available. | * Identify the elements required to establish liability under the ‘rule’. * Explain the defences and remedies. * Watch this [lecture on Rylands v Fletcher liability](https://www.youtube.com/watch?v=DYBQ2Ys-jYs). | * Consider the extent to which this has any practical application today. * Is the ‘rule’ likely to be relevant to issues such as ‘fracking’ or the storage of nuclear waste from power stations? |
| 13 | Vicarious liability:   * an employer’s liability for the actions of an employee during the course of employment * other areas of vicarious liability * theory of tort law – nature and purpose of vicarious liability. | * Identify the tests as to when a worker is an employee. * Explain when an employee is acting in the course of employment. * Identify other relationships where vicarious liability may exist. * Analyse the policy reasons for imposing a strict liability on an employer. * Look at this [article on the liability of a school](http://www.bbc.co.uk/news/uk-england-humber-20424136) and see how you can apply it to vicarious liability. * Look at this [Supreme Court Judgement](https://www.youtube.com/watch?v=2BXhXHr0w0c)  of Cox v MoJ 2016. | * Draw up a table of relationships which are similar to employment relationships and which might attract vicarious liability (eg liability of a prison for negligence by a prisoner during a work activity). * It is unlikely that an examiner can expect too much detail on the tests as to who is an employee, as this is a tort law paper and not an employment law paper. * The importance of this judgement is that it provides a basis for identifying the circumstances in which vicarious liability may be imposed outside relationships of employment. |

Suggested activity: Duty, breach and damage re-cap

* Consolidate student understanding with the following questions:
  + what is the neighbour principle?
  + in which case was it established and by whom?
* What three tests were established for duty of care? Make reference to the case.
* What is the reasonable man test and from which case is it derived?
* What are the risk factors included in breach of duty?
* What is meant by *res ipsa loquitur* and what are the three tests needed to see if it applies?
* Explain what is meant by factual causation and remoteness of damage.
* Create a case test for students, using images as prompts. For example, for Nettleship v Western, images of nettles and a learner driver plate could be shown to students, as a prompt for them to list case name, salient facts and *ratio decidendi*. Find image prompts for the following cases:
  + Topp v London Country Bus
  + Nettleship v Western
  + Watson v BBBC
  + Hill v Chief Constable of South West Yorkshire Police
  + Bolton v Stone
  + Paris v Stepney
  + Whitehouse v Jordan
  + Barnett v Chelsea and Kensington
  + Smith v Leech Brain.